

## REMARKS

Claims 1-4 and 6-12 were examined. Independent claims 1,6 and 10 are amended

The Patent Office rejects claims 1-4 and 6-12 under 35 U.S.C. § 112. The Patent Office rejects claims 1-4 and 6-12 under 35 U.S.C. § 103(a). Reconsideration of the rejected claims is requested in view of the following remarks.

### 35 U.S.C. §112 Rejection of Claim1-4, 6-12

Claim 1-4, 6-12 were rejected by The Patent Office under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter. The rejection has been obviated by the amendment to claims 1,6 and 10 by removing the phrase "consisting essentially of" and adding "selected from the group consisting of at least one of". This amendment is supported in the specification by paragraph [0009] " One suitable second soluble fiber to be combined with inulin is maltodextrin derived from corn..... Other suitable second soluble fibers include, but are not limited to, polydextrose and acacia gum, used alone or in combination with another second fiber." Accordingly, Applicant respectfully requests the withdrawal of the rejection.

### A. 35 U.S.C. §103(a)Rejection of Claim1-4, 6-12

The Patent Office rejects claims 1-4, 6-12 under 35 U.S.C. § 103(b) as obvious over U.S. Patent No. 5,427,556 issued to Frippiat et al (Frippiat) or U.S. Patent No. 5,169,671 issued to Harada et al (Harada) or U.S. Patent No. 6,248,390 issued to Stillman et al. (Stillman) in view of E.P. No. 0756, 828 issued to Green et al. (Green), French application No. 2778849 of Christine (Christine), U.S. Patent No. 6,245,326 issued to Topping et al. (Topping) and U.S. Patent No. 5,744, 134 issued to Paul. (Paul).

A prima facie case of obviousness requires that: [1] the cited references, alone or in combination, disclose each and every claim limitation; [2] there is some

suggestion or motivation, either in the cited references or in the general knowledge in the art, to modify or combine the reference teachings; and [3] there is a reasonable expectation of success in achieving the claimed invention. [MPEP 2142; *In re Vaeck*, 947 F.2d 488, (Fed. Cir. 1991).]. Applicants respectfully submit that the Patent Office failed to establish a prima facie case of obviousness. Specifically, the cited references, alone or in combination, fail to disclose the elements of " the composition is a translucent beverage having a viscosity on the order of 1.4 centipoise or less at a pH less than six." There also is no motivation to combine the reference teachings. Further, the skilled artisan reading the cited references would have had no reasonable expectation of achieving the claimed invention.

The Patent Office directs Applicants' attention to column 20, lines 35-44 and 56-64 of Frippiat where a composition containing inulin and a second component that may include among other compounds a second fiber (xanthan, carob, carboxymethylcellulose, carrageenan, or alginate) is claimed.

Independent claim 1 discloses a fiber composition that "is a translucent beverage having a viscosity on the order of 1.4 centipoise or less at a pH less than six." Frippiat fails to address maintenance of low viscosity on the order of 1.4 centipoise or less and Frippiat fails to address the limitation of a specific pH of less than six. One reason for this limited viscosity range is to preserve mineral absorption after consumption of the beverage. One reason for the limited pH range is "inulin and the other soluble fiber(s) such as maltodextrin are stable in solution and the acidic nature controls bacteria growth ([0010] of the specification)."

The Patent Office directs Applicant's attention to the abstract and col. 3, lines 68-70 and col. 4, lines 10-15 and lines 20-21 of Harada. Harada discloses a polyfructan drink. Harada utilizes the polyfructan that could be inulin as a bulking agent to add *mass and volume* to generate a lower calorie consumable without affecting flavor. Harada fails to address maintenance of low viscosity on the order of 1.4 centipoise or less and Harada fails to address the limitation of a specific pH of less than six. In fact, increased viscosity is sought after as well as tough texture in Harada. The polyfructan in Harada is used to

generate a smooth consistency of a solid somewhat similar to peanut butter without a bitter taste.

The Patent Office directs Applicant's attention to col. 15 lines 60-66 of Stillman. Stillman describes a beverage that contains inulin and guar gum (col. 15, lines 60-66). Stillman discloses a beverage containing one or more fiber sources to be used as bulking agents to maintain the health of patients. These "fiber-water" compositions may be used in patients restricted to bed recovery in order to provide the proper amount of fiber for regularity of bowel health etc. Stillman fails to address the importance of the balance of the fibers as in claim 1 whereby the overall viscosity of the translucent composition is specified. Stillman fails to describe the limitation disclosed in Claim 1 "the first soluble fiber comprises inulin." The fiber concentrations in the beverages in Stillman are decided but the final viscosity of the beverages is not. In addition, there is no pH limitation in the compositions of Stillman since the supplements in Stillman appear to be in a water-soluble dry form.

The reference of Green fails to cure the deficiencies of Frippiat or Harada or Stillman. The Patent Office directs Applicant's attention to col. 3, lines 12-30 and col. 4, lines 36-41 of Green. Green is cited for describing a dried mixture of fibers and oligosaccharides that may be added to water. According to the Patent Office Green discloses a soluble fiber, inulin and a second soluble fiber in amounts from 8-40% as a dry mix. Col. 4 line 40-41 of Green discloses the pH of a liquid composition preferably between 4 and 8. As a preliminary matter Green fails to disclose that its second fiber that is at least one of maltodextrin, polydextrin, and acacia gum. Green fails to disclose a translucent beverage having a viscosity of 1.4 centipoise or less and Green fails to disclose a pH. less than six.

The reference of Topping fails to cure the deficiencies of Frippiat or Harada or Stillman and Green. The Patent Office directs Applicant's attention to col. 4 lines 7-9 and lines 64-68 of Topping. According to the Patent Office, Topping discloses a composition containing psyllium, inulin and maltodextrin and other soluble gums such as pectin and guar gum. Topping fails to disclose a composition of a translucent beverage having a viscosity on the order of 1.4 centipoise or less. Topping fails to disclose a pH. less than six. In Topping, the compositions are directed toward cholesterol reduction and faecal bulk promotion.

The reference of Paul fails to cure the deficiencies of Frippiat or Harada or Stillman and Green and Topping. The Patent Office directs Applicant's attention to col. 16, lines 1-2, and 58-60 of Paul. Paul discloses a composition containing inulin, maltodextrin and other soluble gums such as pectin and guar gum. Paul fails to disclose a composition of a translucent beverage having a viscosity on the order of 1.4 centipoise or less. Paul fails to disclose a pH. less than six.

The reference of Christine (French application No. 2778849 of Christine.) referred to in a previous office action and mentioned on page 4 paragraph 3 of this office action discloses use of 5% arabinoxylanes. Assuming for doctrine of equivalent purposes that arabinoxylanes and inulin are equivalent components,<sup>1</sup> it does not necessarily follow that because Christine describes a composition having 5% arabinoxylanes, the composition has a viscosity of 1.4 centipoise or less. The reference of Christine fails to cure the deficiencies of Frippiat or Harada or Stillman and Green, Topping and Paul. Christine fails to disclose a composition of a translucent beverage having a viscosity on the order of 1.4 centipoise or less. Christine fails to disclose a pH. less than six to increase stability of the fibers in solution (e.g.inulin). Christine fails to disclose the combination of at least two fibers to achieve a fiber content approaching 40% with low viscosity ([0008] of the Application).

Claim 1 is prima facie not obvious over the cited references, because the references fail to describe a composition of "a translucent beverage having a viscosity on the order of 1.4 centipoise or less at a pH less than six."

There is similarly no motivation from the cited references to combine two soluble fibers at a viscosity of 1.4 or less.

For the above reasons, independent claim 1 is not obvious over the cited references. Claims 2-4 depend from claim 1 and therefore contain all the limitations of that claim and include additional limitations. Therefore, claims 2-4 are not obvious over the cited references.

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<sup>1</sup> Christine refers to arabinoxylanes that, according to Applicants' representative's research is a primary component of wheat and rice bran. Inulin is a fructose polymer isolated principally from Chicory root.

Independent claim 6 relates to a method including administering "a translucent beverage composition comprising a first soluble fiber comprising inulin and a second soluble fiber." The composition has a viscosity on the order of 1.4 centipoise or less at a pH less than six. The composition would not necessarily be a beverage but could be a solid or a powder used to form a beverage in a method of administering a beverage comprising two soluble fiber components. If the composition is a powder, the powder would be mixed with a liquid and the pH would be adjusted (if required) to less than six.

Claim 6 is not prima facie obvious because the Patent Office fails to describe a solubilized dual fiber translucent composition with a limited viscosity in the form of a beverage for human consumption. As noted above, none of the references recite administering a beverage of the claimed viscosity. Further, there is no motivation from the various combination of references to administer a beverage of the claimed viscosity.

For the above stated reasons, independent claim 6 is not obvious. Claims 7-9 depend from claim 6 and contain all the limitations of that claim and additional limitations. Therefore, claims 7-9 are not obvious over the cited references.

Independent claim 10 relates to a method including administering "a translucent beverage composition comprising a first soluble fiber comprising inulin and a second soluble fiber." The composition has a viscosity on the order of 1.4 centipoise or less at a pH less than six. The composition would not necessarily be a beverage but could be a solid or a powder used to form a beverage in a method of administering a beverage comprising two soluble fiber components. If the composition is a powder, the powder would be mixed with a liquid and the pH would be adjusted (if required) to less than six.

Claim 10 is not prima facie obvious because the Patent Office fails to describe a solubilized single strength translucent beverage for human consumption of dual fibers with a limited viscosity and limited pH. As noted above, none of the references recite administering a beverage of dual fibers of the claimed viscosity. Further, there is no motivation from the various combination of references to administer a beverage of the claimed viscosity.

For the above stated reasons, independent claim 10 is not obvious. Claims 11-12 depend from claim 10 and contain all the limitations of that claim and additional limitations. Therefore, claims 11-12 are not obvious over the cited references.

### **Conclusion**

Applicants respectfully submit that the Action fails to present a prima facie case of obviousness for any pending claim. Accordingly, Applicant respectfully requests the withdrawal of the rejection. As the pending rejections of claims were under 35 U.S.C. § 112 and 35 U.S.C. § 103, Applicant submits that the pending claims are now in condition for allowance.

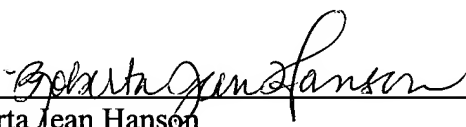
### **Invitation for a Telephone Interview**

The Patent Office is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Respectfully submitted,

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